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COMMISSIONS OF INQUIRY IN CANADA

1867 - 1949

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Ottawa, 12 September, 1950

The Secretary to the Cabinet,
Privy Council,
Ottawa.

Sir:

I am presenting to you a report
on Commissions of Inquiry in Canada from
1867-1949. This study was undertaken during
three months of the Summer of 1950.

I am, Sir,
Your obedient servant,

K. B. Callard

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COMMISSIONS OF INQUIRY IN CANADA

I. Introduction

Every government is faced periodically with problems which require investigation. The information to be obtained, by its nature or scope, frequently is not suitable for Civil Service inquiry. Consequently a special ad hoc organization is created, and is dissolved on completion of its purpose. Criticism is often heard of the method adopted in a particular case, of the nature of a report or of the action taken upon it. But there has been no attempt in recent years to examine the whole problem of executive inquiries to ascertain the adequacy of existing techniques. Indeed, it is a difficult task to find out what are the existing techniques and how frequently they are employed.

The present study is based mainly upon the Index and Register to the Orders in Council from 1867 to 1949. The information to be obtained from the Index and Register was frequently insufficient to reveal the type of inquiry, the nature and scope of the subject-matter, and the names of the commissioners. Time did not permit reference to the text of every Order in Council, though several hundreds of these were scrutinized in cases which appeared to require fuller information. At times the Order in Council itself was unsatisfactory, failing to specify the authority under which the commission was established, or the precise nature of the inquiry. Such phrases as "a commission to inquire into", or "an investigation under the Inquiries Act" were found in several Orders.

For some years, before 1881, no subject index was found, and the alphabetical and departmental indexes were at times misleading. A few omissions from the later subject indexes also came to light.

The list compiled from the Orders in Council was compared with lists printed in the Canada Year Book, from 1904, and with a list prepared by the Secretary of State Department showing the issue of Royal Warrants. This latter list showed some Royal Warrants to have issued in instances where no Order in Council could be traced. Such inquiries are indicated with an appropriate entry in the 'Remarks' column in Appendix 'A'.

Subject to the limitations mentioned above, Appendix 'A' gives an almost complete list of inquiries initiated by Order in Council, since Confederation. In cases of doubt the inquiry concerned has been listed and the reasons for doubt indicated. The division into inquiries under Part I and Part II of the Inquiries Act, (1) and the further analysis by classes is of more dubious validity.

There have also been inquiries of considerable importance in which no Order in Council has been employed and no Royal Warrant issued. A recent example is the Mainguy Commission (1949), which investigated the state of discipline of units of the Royal Canadian Navy. As it seemed impossible systematically to trace such inquiries they have not been included for the purposes of the present study.

Besides the relevant Order in Council, the printed reports of some commissions have been consulted in preparing this report. The legislation governing certain special types of inquiry was studied and extracts are given in some of the later sections. Certain published material is also available, and where reference to it has been made an appropriate footnote is included. (2)

(1) Now Revised Statutes of Canada, 1927, C.99.

(2) These are two articles which deal specifically with commissions of inquiry in Canada. They are:
Hodgetts, J. E. Royal Commissions of Inquiry
in Canada; Public Administration
Review, Winter, 1949.
Sellar, W. A Century of Commissions of Inquiry;
25 Canadian Bar Review (1947) P.2.

II. Development of Executive Inquiry

Origins in England - In the time of the undifferentiated curia regis of the Norman kings, a commission was simply a formal order to carry out certain duties on His Majesty's behalf. The duties might be military, administrative or merely gathering information. The Domesday survey (1080-1086) may be regarded as the first Royal Commission of inquiry (3). After a period of extensive use under the Tudors the practice of the appointment of Royal Commissions declined until the Nineteenth Century when they achieved their greatest prominence.

Many of the British inquiries of the last Century related to colonial matters. For example, in 1819-22 a commission inquired into the state of New South Wales and another in 1824-9 into criminal administration in the West Indies (4). The appointment of Lord Durham in 1838 as a Royal Commissioner resulted in the famous report on the government of Canada, and led directly to responsible government. Royal Commissions which affected Canada as a part of the Empire continued to issue from London, but on most matters control had passed to Canadian hands.

Inquiries Act, Part I - The original Inquiries Act was placed upon the statute book in 1846 (C.38), and with one minor change is now Part I of the Inquiries Act (R.S.C. 1927 C.99). Its purpose was stated in the preamble:

"Whereas it frequently becomes necessary for the Executive Government to institute inquiries on certain matters connected with the good government of this Province; and whereas the power of procuring evidence under oath in such cases would greatly tend to the public advantage as well as to afford protection to Her Majesty's subjects from false and malicious testimony or representations";

(3) Clokie, H. McD. and Robinson, J. W.
Royal Commissions of Inquiry (1937).

(4) Ibid P.58-59

Inquiries Act, Part II - This Act, while it was applicable to the inquiries into major problems of social policy, clearly contemplated the detailed investigation of the conduct of individuals. However, it was found to be too cumbersome to deal effectively with minor cases. The Prime Minister stated in the House of Commons:

"The general Act, which was introduced immediately after Confederation, provided that when any matter arose affecting the well-being of the Dominion, a Commission might issue under the Great Seal of Canada, and the Commission would have the power of taking testimony under oath. That was a very formal proceeding, and it established a tribunal somewhat in the nature of a preliminary impeachment" (5).

Accordingly the Government introduced a new Bill enabling departmental inquiries to take evidence under oath, to compel the attendance of witnesses and the production of documents. This Act (43 Victoria C.12) became C.115 of the Revised Statutes of 1886 and is now Part II of the Inquiries Act.

Inquiries Act, Part III - The addition of Part II resulted in a considerable increase of investigations of the conduct of individuals (See Appendix 'B'). Upon the assumption of power by the Government under Sir R. L. Borden, a new Part was added to the Act (1912 C.28). It provided for the employment of counsel and assistants by commissioners, and for the appointment by the commission of deputy commissioners with equivalent powers. Greater safeguards for individuals whose conduct was under investigation were also added.

(5) House of Commons Debates, 3rd May, 1880
Sir John A. Macdonald.

III. Types of Inquiry

There are 2 principle means of classifying commissions. They may be divided according to status, the formal authority under which they were established. Alternatively a logical classification can be attempted, according to purpose and importance. Neither of these provides clear-cut lines of division, for the authority is often not stated or is under more than one Act, and 'purpose' and 'importance' are largely matters of opinion.

Commissions may and do issue for purposes other than strict inquiry, yet their duties may involve some degree of investigation. The Illegal Warfare Claims Commission (207), (6) which continued for over 10 years, and the Royal Commission on Japanese Property Losses (293) both exercised functions rather different from normal inquiry. Commissions may be difficult to classify for other reasons; for example, the members of the Alaska Highway Commission (267) received Royal Warrants, yet since it contained 4 members from the United States it cannot be regarded in the same light as a group responsible exclusively to the Crown.

Special Inquiries - The general commission of inquiry, having no established form, size or procedure, has proved an admirably flexible instrument for undertaking the most varied types of investigation. The following examples serve to indicate the range covered:

- 1892 - Liquor Traffic (40)
- 1892 - Charges against Sir A. Caron (44)
- 1906 - Collapso, West Block Tower (119)
- 1935 - Abusive language; Agnes MacPhail, MP (254)
- 1946 - Espionage in Government Service (290)
- 1949 - The Development of the Arts, Letters and Sciences (298)

There are certain uniform types of investigation which have been established under particular Acts of Parliament. Such inquiries may have been at one time commissions, at another, administrative inquiries. The principal classes are given separate attention in later stages of this report and are shown in Table 1.

(6) A number in parenthesis following the title of a commission indicates the serial number in Appendix 'A'.

Royal Commissions of Inquiry - The term Royal Commission has long been in use, but it is frequently applied wrongly. It is not necessary for the authority of the Inquiries Act to be invoked before the issue of a Royal Commission, but "there is, in law, a distinction between royal commissions constituted by the Crown on its own responsibility and commissions of inquiry which are set up under the authority of a statute."(7) The distinction has regard to the administration of oaths, compelling the attendance of witnesses, and the power to spend public funds. Since Confederation, it appears that Royal Commissions have been appointed under the authority of the Inquiries Act or some other statute. Appointment is initiated by Order in Council, and executed by Royal Warrant under the Great Seal of Canada.

When created a Royal Commission, unlike other forms of inquiry, is not responsible to the Cabinet or to Parliament. "A Royal Commission is no subordinate

part of a larger body; it is in no sense a fraction or segment of Parliament, Courts, Privy Council or Executive Departments. If a committee may be defined as a secondary organ of one of the institutions of the state, a Royal Commission must be defined not as such a secondary organ but as a primary institution, though of a temporary kind. In other words the Royal Commission is not created as a subordinate part of any other institution but takes its formal origin from the legal centre of authority, the Crown. When properly constituted a Commission is upon a formal equality with the other institutions of the state, such as the Courts, Houses of Parliament, Privy Council, etc."(8).

Since the Cabinet 'recommends' to the Governor in Council the terms of reference, and the names of the commissioners, and may similarly make alterations in terms or personnel, this formal equality with Parliament and Council, appears to lack reality. But Mr. Mackenzie King, when in opposition, clearly overstates the case for ministerial control:

(7) Watson Sellar A Century of Commissions of Inquiry
25 Canadian Bar Review (1947) P.2

(8) Clokie H. McD and Robinson J. W. op cit P.150-151

"The appointment of a royal commission is an executive act and the ministry must take responsibility for every act of the commission. The government may not be satisfied with the actions of a commission, they may if they so desire dismiss it, but in that event they must come to parliament and take the responsibility for the dismissal. If a secretary or any other officer of a commission makes a mistake, the ministry cannot escape full responsibility for the consequences of a mistake. I do not say that the ministry must necessarily agree with the particular views expressed by the Commission or anything of the kind; they may repudiate the views, but they cannot repudiate full responsibility for the appointment of the commission....." (9)

- (9) House of Commons Debates, 1st July, 1931, P.3297
(Authors Italics).

TABLE I. NUMBERS OF COMMISSIONS BY CLASSES, 1867-1949

Class		1867 -79	1880 -89	1890 -99	1900 -09	1910 -19	1920 -29	1930 -39	1940 -49	Total
1)	Major inquiries - public policy	5	11	7	13	25	12	19	14	106
2)	Fact finding - details	1	7	11	15	21	4	6	11	76
3)	Rights and claims	2	1	12	12	8	7	7	2	51
4)	Charges and irregularities	7	1	11	12	12	8	7	2	60
	TOTAL (classes 1 - 4)	(15)	(20)	(41)	(52)	(66)	(31)	(39)	(29)	(293)
5)	Part I Charges of political partizanship	-	-	-	-	-	35	137	6	178
6	Naturalization Certificates	-	-	-	-	-	7	6	5	18
7)	Judges' Act	-	5	3	1	1	1	3	1	15
8)	Combines	-	-	4	-	8	2	-	-	14
9)	Industrial Disputes	-	-	1	3	17	4	5	9	39
10)	Fact finding	1	-	3	1	8	9	4	8	34
11)	Charges and irregularities	-	36	95	28	86	32	29	3	309
12)	Dominion Lands Act	3	9	3	6	176	28	-	-	225
13)	Shipping Act	11	37	22	5	5	-	-	-	80
	TOTAL	30	107	167	100	358	155	225	61	1205

No government, certainly not Mr. King's, has felt obliged to take or assume responsibility for 'every act' of a Commission. The Cabinet may advise cancellation of a Commission, as with the Chignecto Canal Commission (233). Alternatively it may starve one to death. In reply to a question from Hon. R. A. Crerar whether the Hyndman Commission on the Grain Trade (205) was continuing, the Minister of Trade and Commerce (Mr. Robb) replied (They) "have apparently discontinued their own work. They have run out of supplies" (10). Whether a Commission is dismissed or discontinued there seems to be no reason why the Cabinet "must come to Parliament". The appointment and cancellation are both made by Order, and in neither case is Parliamentary discussion or approval required, though of course the relevant information would be given.

Number of Inquiries. - 1205 Inquiries initiated by Order in Council are shown in Table I. With the exception of those under the Dominion Lands Act (see Section XIII), and the Canada Shipping Act (see Section XIV), these are listed individually in Appendixes 'A' and 'B'. These lists make no claim to be either completely accurate or comprehensive. And inquiries, even though entitled 'commission' (such as the Mainguy Commission on the Royal Canadian Navy, 1949) not initiated by Order in Council have not been included.

The classification adopted attempts to follow the purpose of the inquiry. If a Royal Commission be strictly defined as one appointed by Order in Council and Royal Warrant then most of classes 1-9 would qualify, giving a total of 557. If inquiries into partisanship charges (class 5) and under special Acts (6-9) are excluded 293 Commissions remain. In conventional terminology, relating to a Commission of major public interest and importance it is doubtful if more than 150 of these would be described as Royal Commissions.

Perhaps the most noteworthy feature of Table I is the marked decline in appointments in the last decade. Class 1 and 2 inquiries are slightly above the average for 8 decades. There were no inquiries initiated by

(10) House of Commons Debates March 14, 1922, PP.49-50.

Order in Council under the Shipping or Dominion Lands Acts, but this was the same in 1930-39 when the total number of commissions was 225. The 61 commissions of 1940-49 were the lowest total for any decade since 1867-79. The main reduction in numbers occurred in classes 3, 4, 5, and 11. The war and the long period of Liberal supremacy may have accounted for much of this, but there seems also to have been greater reluctance to establish such inquiries.

IV. Nature and Purpose of Inquiries

There are several purposes that may be served by the setting up of an inquiry.

a) Public Policy - On many issues of policy the government of the day may feel that it has insufficient information and authoritative opinion to commence a major innovation. A full-scale impartial inquiry is able to provide both evidence on which policy may be based and recommendations for the policy itself. It should also be recognized that an inquiry provides a government with a convenient reason for delaying action that it is unwilling to take.

b) Public Opinion - A Royal Commission frequently provides the occasion for the sounding of the opinions across the country on a particular issue. The attendant publicity ensures a considerable degree of education of public opinion, as well as the opportunity for gauging its strength.

c) Research - A full inquiry enables extensive research to be undertaken, either by the Commission or by bodies presenting briefs. Such research is simultaneously directed upon a single set of terms of reference, in a manner that is otherwise seldom possible.

d) Control of Administration - A Commission, by virtue of its high status and wide powers, is able to conduct a full investigation which will be widely accepted as thorough and impartial. Thus it is far superior to a committee of the legislature for the investigation of major shortcomings of the administration.

e) Adjudication - In cases where an issue of some importance is in dispute between two parties, whether governmental or private, and which cannot be resolved by normal judicial or administrative procedures, a Commission of Inquiry may be accepted as arbiter.

The absence of rigid requirements as to personnel or procedure of commissions, enables each to be shaped and directed so as best to pursue the type of task it has been allotted. Full advantage has not in all cases been taken of this flexibility which is one of the most valuable aspects of the commission system.

V. Appointment

a) Origin - The decision to appoint a commission of inquiry may originate in many ways. In some instances (11) charges levelled in Parliament or the press have impelled the government to launch an investigation. Parliamentary committees have been transformed in order that they may have greater powers or that they may continue while Parliament is not in session (12). But the commission is an executive form of inquiry, and at some stage the government must be convinced of its desirability. The necessity for a general inquiry (mainly class 1), will normally have been under consideration in a Department for a long period.

b) Subjects - The main diversity of subject-matter arises within class 1. But there are many examples of periodic inquiries into the same subject. The 106 commissions in this class can be analysed as follows:-

Inquiries into:

Transport problems, general	6
inland waterways	15
railways	4
	<u>25</u>
Labour (including immigration of foreign labour)	11
Public Service	6
Fisheries	10
Agriculture, general	3
grain (including grain trade)	7
	<u>10</u>
Federal-Provincial affairs	8
Industry (including contracts)	11
Commerce (other than grain trade)	5
Miscellaneous	19
Total	<u>106</u>

(11) e.g. 1873 Pacific Railway Scandal (3); 1916 Kyte charges (167); 1938 Bren gun contract (268).

(12) e.g. 1946 Indian Act (292); 1954 Price Spreads (252).

It is less easy to categorize classes 2-4, except to remark that apart from some 15 investigations of major scandals included in class 4, they are of lesser and more limited significance than class 1.

c) Status of inquiries - The line of division between commissions established under Part I and those under Part II of the Inquiries Act, is not logically clear. Inquiries under Part II are limited to "the state and management of the business, or any part of the business, of (a) department, and the conduct of any person in such service, so far as the same relates to his official duties" (13). Powers of compelling testimony extend to persons other than civil servants.

It may be difficult for a Department, when initiating an inquiry, to know how far members of the public may be implicated, and without reading the whole of the evidence it is impossible to say in retrospect, that an inquiry apparently dealing with Departmental matters may not have covered a wider range. Nevertheless there remain many commissions whose establishment under Part I seems to have had doubtful justification (14). These are quite apart from the class 5 commissions which are treated separately in Section VIII.

The prestige and authority of the commission form of inquiry may easily be dissipated by making too many appointments on matters of trivial or limited importance. In order that this shall not occur it is suggested:

(i) That no commission shall issue where other appropriate means of inquiry exist. For inquiries under Part II within Departments, administrative instructions should normally prove sufficient to obtain all the facts required. Many disciplinary cases which may involve dismissal of the employee are heard without evidence being given upon oath.

(ii) That recommendations to Council for the issue of a commission to investigate the conduct of public servants shall be scrutinized by one Department. (This might be either the Department of Justice or the Secretary of State Department, see Sec. VII). Such Department would

(13) R.S.C. 1927, C.99, S.6

(14) e.s. 1904, Administration pilotage district B.C. (106)
1930, Administration, Halifax Harbour (231)
1930, Charges against stockyard agent, Alta. (232)

examine the prima facie evidence and would make the final recommendation to Council. Such procedure appears to have been envisaged, though it does not now operate, in P.C. 1423, 12 June, 1936, regarding partizanship inquiries. In Section VIII it is suggested that the Civil Service Commission might take over most of these investigations.

(iii) That the use of a Royal Commission be restricted to matters of major public importance. In order to emphasize the high status of such inquiries the term 'Royal Commission' should be used in the Order in Council authorizing establishment, and in all documents, other than the Royal Warrant, connected with the inquiry.

(iv) A clear distinction can be drawn between inquiries designed to shape public policy, and those which investigate allegations and charges against the Government or other bodies. In the former most persons are willing to give evidence and assist the commission in every way. There should be no need for the exercise of compulsion or for the administration of oaths. Without a Special Act no United Kingdom Royal Commission has such powers, and few Canadian commissions have found them necessary. Where reputations are concerned, followed perhaps by prosecution or loss of office, greater powers are necessary. For minor cases involving government employees Part II of the Inquiries Act is applicable (see Section VIII). Where issues or persons of greater public importance are involved a more elaborate procedure is required. There have been some 15 such investigations since Confederation, including: 1873, the Pacific Railway Scandal (3); 1916, the Kyte Charges (167); and 1938, the Bren Gun Contract Commission (268); the 1946 Royal Commission on Espionage (290) might also be included in this category. Since the government's reputation is often involved it would seem more fitting that such an inquiry should be approved by Parliament. The (United Kingdom) Tribunals of Inquiry (Evidence) Act 1921 (15) makes provision for Tribunals to be established after a Joint Resolution has been passed by both Houses. It is suggested that some similar machinery be established in Canada. This would have the additional advantage of enabling the judicial aspect to be removed from the more usual type of commission.

(v) That consideration should be given to other forms of inquiry in minor matters where Part II of the Inquiries Act does not now apply. Where possible such inquiries into detail should be executed through normal administrative channels. If it be found that certain minor matters can properly be investigated only by Royal Commission, then a modification the legislation might be contemplated, to bring them within the scope of Part II. In such event additional safeguards would almost certainly be found necessary.

(vi) The structure of types of inquiry which would emerge from the suggestions in (i) to (v) above would be:

- 1) Royal Commission - no compulsory powers unless added by Parliament.
- 2) Royal Commission - Special Tribunal: powers to be laid down in Inquiries Act to be conferred by Joint Resolution.
- 3) Part II Commission - to cover minor inquiries when commission is necessary.
- 4) Civil Service Commission - to assume responsibility for investigating charges against minor government employees.
- 5) Departmental Inquiries - not commissions, no special powers.

d) Terms of reference - It is a platitude of long standing that, if the right answer is desired the right question must be asked. A commission should be strictly bound by its terms of reference, though some appear to have exceeded these bounds (16) and others have asked that the terms be modified. Nevertheless hasty drafting of the terms may result in the serious misdirection of the work of a body of distinguished men, over a period of months or years.

(16) e.g. (1946) The Royal Commission on Administrative Classification in the Public Service (291) might be held to have exceeded its function in analysing the merits of the division of functions between the Treasury Board and the Civil Service Commission.

The commissioners may not be aware of the exact motives that impelled the establishment of the inquiry. In any case where doubt may arise the Chairman of the commission should be consulted before the terms of reference are finally adopted.

The terms of reference vary with the purpose of the inquiry and the nature of the subject to be studied. If the government desires to introduce new legislation a series of specific questions is more likely to produce the desired result. If the object be to obtain the widest possible expression of opinion, then broad terms will encourage diverse groups across the country to submit testimony. Broad questions will produce comprehensive and general answers, specific questions will produce detailed and exhaustive answers (17).

The Warrant does not normally prescribe any period within which the inquiry is to be completed. The recommendation that the Commissioner be instructed to make his report as speedily as possible, has been included in several Orders in Council (18). Such injunction would undoubtedly be an indication as to the type of investigation to be conducted.

The commissioners are entitled to know what purpose their inquiry is intended to serve, that they may determine their procedure accordingly. It is almost impossible to set any precise financial limit to the activities of a commission, or to insist upon a report within an exact period of time. If a government has a purpose in mind, it should reveal it in the questions which it poses for the commission to answer. Terms of reference require as much consideration as a piece of legislation and should not therefore be framed solely at an exalted political level.

(17) See Appendix 'C' for examples of different types of terms of reference.

(18) e.g. P.C. 223, 27 January, 1936, relating to the Textile Industry Commission (263); P.C. 1680, 13th July, 1916, relating to the Railways and Transportation Commission (170).

e) Membership, Size - In general the size of commissions in Canada has been smaller than in the United Kingdom. The numbers of commissions in each commission in Class 1-4 is given below:

	<u>Class 1</u>	<u>Classes 1-4</u>
1 Commissioner	15	138
2 Commissioners	4	42
3 Commissioners	46	68
4 Commissioners	15	17
5 Commissioners	11	11
5+ Commissioners	15	15
Not known	<u>--</u> <u>106</u>	<u>2</u> <u>295</u>

It can be seen that the most common size of a major Commission is 3 members; those with more than 5 commissioners (19) are usually bodies which commenced as committees, or were constituted to provide representation for various groups. The prevalence of the single-member commission in classes 2, 3 and 4 is noticeable, and is to be expected from the nature of the subject matter. When investigating charges or passing upon a claim a single mind may be able to proceed with greater certainty and expedition. But the more general the inquiry, the stronger the reasons would appear to be for group discussion of evidence and conclusions. Thus it is understandable that a single commissioner was employed to investigate (1942) the Despatch of Troops to Hong Kong (273), and probably the most penetrating of the reports on the Civil Service was that produced (1912) by Sir George Murray (140). It is more surprising that one person should have been appointed to investigate, (1936) the Grain Trade (264), (1919) Racing and Betting (190) or (1917) the Newsprint Industry (180).

f) Membership, Personnel - From the Orders in Council it is easier to identify the commissions by place of residence than by occupation. But of some 700 commissioners listed in classes 1-4, the professions of 287 are given. A much higher proportion is known by occupation in classes 5-9.

(19) The biggest commission, that (1920) on Uniformity in Labour Laws (203) would appear to have had 27 members. Of the more normally constituted commissions, that (1886) on Labour Conditions (31) had 11 commissioners.

TABLE 2 OCCUPATIONS OF COMMISSIONERS

Occupation	Class 1	Classes 2-4	Class 5	Class 6	Class 7	Class 8	Class 9	Total
Judge	44	75	1	16	14	3	20	173
Lawyer	9	19	123	12	--	8	5	176
Civil Servant	16	18	--	6	--	--	3	43
Professor	25	4	--	--	--	1	1	29
Professional	12	14	--	--	--	--	--	26
MP or Senator	25	4	--	--	--	--	--	29
Business-Man	15	--	--	--	--	--	--	15
Other occupations	8	--	--	--	--	--	--	8
Unidentified	412*	56	4	1	6	42	521*	
	700*	180	36	15	18	71	1020*	

* Approximation.

It seems probable that in the foregoing Table most of the judges and a majority of the lawyers have been revealed. No such assumption can be made regarding other occupations. The preponderance of legal talent, compared with other occupations, is therefore exaggerated, but in total it remains clear that more than one-third of the commissioners in these classes, has been either judges or lawyers. This proportion has had very great influence in determining the character of commissions of inquiry in Canada. In order that the judicial nature of inquiries should be diminished it would be necessary radically to change the membership of these bodies.

Judges - The reasons for this preference for practitioners in the law are various, but deeply rooted among them is the impression that a commission is not so much for the assistance of executive government, but an instrument whereby government may be examined and adjudged; a body convened in response to public pressure which shall have the safeguards and the authority to lay bare the imperfections of those in power. This attitude is illustrated by words spoken in a recent debate:

"and when the public wants a royal commission, generally, I think, it feels more satisfied that an impartial report will be made if a judge is at the head of that commission" (20).

The reply to the plea, by a lawyer, is also interesting,

"I pray the Government to desist from undermining the Bench by referring to members of the judiciary questions highly tinged with politics, questions which are beyond and outside the ambit of judicial functions and which are drawing into the dust and dirt of the political arena those whom we have liked to believe were above and beyond such controversies" (21).

It is true that the debate was upon the Judges Act, but the sidelight cast on the role of commissions of inquiry is nonetheless revealing.

(20) Debates, House of Commons, 2 August, 1946, per Angus McInnis. Authors italics.

(21) Ibid per J. Hackett, KC. Authors italics.

In Canada there are few men of integrity and reputation engaged in public life, who are not active participants in party strife. In this sense the judges are eminently 'available'; and at short notice a judge is able to devote himself wholly to the conduct of an inquiry. He has been appointed by the federal government and his time is at its disposal without extra charge (22). Thus the government is able to employ a judge for these purposes until he may be regarded as an experienced commissioner! Mr. Justice G. W. Burbidge served on 7 commissions, and Mr. Justice W. F. A. Turgeon is about to complete his sixth assignment. The only other individual whose appointments exceed five (in classes 1-4) was Professor E. E. Prince.

Barristers and professors - The barrister and the university professor are placed in almost as convenient position in their ability to turn from, or add to, their normal pursuits. A university professor may usually be found who has some special competence in the field of the inquiry without having committed himself too deeply to any given solution, and the connection between law and politics is close enough in Canada to provide a ready supply of lawyers to accept government appointments. Both the professor and the lawyer require compensation; that of former is small, of the latter, large; the connection between law and politics has already been mentioned (23).

Civil Servants - The civil servant is clearly an inappropriate person to investigate major allegations against his employer, the government. If he is to investigate a Departmental matter, it should not be necessary to grant him the powers of a commission. (see also Sub-Section C.) He may be more valuable as a member of a commission that has to deal with technical matters, or with complex administrative procedures in which he is experienced. Even in such instances it should be considered whether appointment as secretary, research director or special assistant would not be advisable. A commission, while appointed through the agency of the government of the day is not responsible to it, and the integrity of the civil servant should not be strained by putting him in a position where he might be required to oppose or criticize known governmental opinions.

(22) Judges Act 10 George VI C.56 S.37 - While no fee is paid to a judge, expenses are met by a special allowance.

(23) See also Section VII.

Representation of interests - It might be thought that the best way to achieve an agreed policy in a controversial field is to assemble the protagonists and allow them to argue the matter, under the supervision of an impartial chairman. The method resembles that of conciliation in industrial disputes, and suffers from the same difficulties. Such commissions have to be large to provide for proper representation. And the members become more interested in building their own 'case' than in hearing the evidence put before them. The Balfour Committee on Royal Commission Procedure (24) observed:

"It seems to us impossible to avoid the conclusion that appointments have sometimes been made to Commissions of individuals whose proper place would rather have been in the witness box than on the tribunal. A Commission selected on the principle of representing various interests starts with a serious handicap against the probability of harmony in its work, and perhaps also even of a practical result from its labours."

The best example of representation was the 1920 Commission on Uniformity in Labour Laws (203) which included representatives of government, employers and employees from each of 8 provinces as well as 3 federal representatives. The 1919 Commission on Industrial Relations (192) also explicitly adopted the principle of representation. In other instances it seems probable that a particular individual was selected as an eminent member of a group, though not formally designated as a representative. Thus during a Parliamentary discussion of the Grain Futures Commission (238), it was stated: "The government selected Mr. Stanley Evans", and the "Hon. C. J. Brown became the representative of the agrarian interests" (25).

Provincial, or at least regional points of view are seldom ignored when selecting commissioners. When a Province is specifically affected, as with the 1948 Fraser Valley Commission (296), its government may be asked to appoint one member. Such a commission is normally directed to report to both governments, and this may be inconsistent with its appointment as a Royal Commission under the federal Great Seal. However, there seems to be nothing inherently inconsistent in responsibility to the Crown in Canada and to the Crown in a Province. Canadian members have in the past been nominated to serve on Imperial Royal Commissions.

(24) Cd. 5235, 1910, P.6.

(25) Debates, House of Commons, 1931, P.3297.

The 3-member commission has proved convenient since it allows for the appointment of one French-speaking member, one from Western Canada, and one from Ontario or the Maritime Provinces. Where the commission has been appointed for the primary purpose of providing a public forum for the nation to express its grievances, the sectional 'representation' on the commission may be of great importance if its deliberations and findings are to be treated with respect.

VI. Procedure

The Inquiries Act leaves each commission entirely free to devise its own procedure, and this is one of the principle assets of this form of inquiry. Each investigation can be adapted to suit the requirements of the subject-matter, of the commissioners and of the witnesses.

Apart from the limitations as to time mentioned in Section V d., some commissions have been instructed as to the procedure to be adopted. The Royal Commission on Price Spreads (252) was instructed:

"that the meetings of the said commission be held at the city of Ottawa".... and further:... "to hear evidence of any person who may be affected by the matters heretofore considered by the said committee and who may desire to be heard before the commissioners". (26)

The Royal Commission on Espionage (290) was directed:

"... that a record shall be made of all the evidence which shall be given or produced before them as to the matters of the said inquiry and that the oral evidence of witnesses before the said Commissioners shall be taken in shorthand by a shorthand writer, approved and sworn by the said Commissioners or one of them and shall be taken down question and answer and it shall not be necessary for the evidence or deposition of any witness to be read over to or signed by the person examined and said evidence shall be certified by the person or persons taking the same as correct; "That the said Commissioners may adopt such procedure and method as they may deem expedient for the conduct of such inquiry and may alter or change the same from time to time;" (27)

Initial Meetings - The first meetings of any major commission will be devoted to its own organization. Careful consideration at this stage of every foreseeable detail of procedure, may well save the commissioners much time at later

(26) P.C. 1461 7 July 1934.

(27) P.C. 411 5 February 1946. The somewhat surprising lack of punctuation is copied from the Report of the Royal Commission P.8

stages, and may enable them to obtain the information they require in the most convenient form. The impression is sometimes given that a commission commences by saying "Let us see what is put before us," and do not decide on what they are looking for until they come to write a report. Such an attitude is perhaps fostered by the judicial inclination to allow counsel to take the initiative.

Before the commissioners meet it might be well to give each member a memorandum on organization and procedure. This would consist of advice distilled from the experience of past commissions, and should not bind the new commission in any way. The first piece of advice might well be to stress the importance of thorough consideration of procedural matters before any evidence is received. Other items that might be included in such a memorandum will appear in subsequent paragraphs of this study.

Chairman - It has already been suggested that the chairman should always be consulted on the terms of reference (Section V d.) The chairman is normally the most eminent of the commissioners and is always more than a mere presiding officer. He should be the channel of communication between the commission, the government and outside bodies. He should give rulings on procedure during oral hearings, and should make himself responsible for keeping witnesses and commissioners to the point. He should endeavour to preserve harmony amongst the commissioners, that they may produce an unanimous and valuable report.

Evidence - Each commission must decide at the outset, what sort of evidence it desires, how it is to be presented and where it can most probably be obtained. It must decide whether it is required to act as a public forum or a means of drawing public attention to its particular problem. A decision to travel widely and to hold lengthy public hearings may be based on these factors. But the terms of reference instruct the commission to produce a report, and this is to be regarded as its primary duty.

There seems to be an assumption that the "standard" procedure of a Royal Commission is to hear a large number of witnesses, in oral session, at a series of places distributed between the Atlantic and Pacific Oceans. Such a process is lengthy, expensive of time and money, and frequently inefficient. For such a commission as that (1949)

on the Development of the Arts, Letters and Sciences (298) no other procedure seems possible, but this is the exception rather than the rule. It should be noted that the (1948) Royal Commission on Prices (295) decided not to travel across the country.

Written and oral submissions - Many commissions appear to have made too little use of written submissions. This is largely due to the frequent attempt to reproduce the atmosphere of the court-room. Written briefs are normally presented in advance, but are often read into the evidence at oral sessions. This is, by any standard, an appalling waste of time. A written submission may be studied by one commissioner and members of the staff who may draw the attention of the full commission to points of note. Where doubt as to meaning, or desire for amplification arises, this may be requested also in written form. When the commission, having studied the written submission, considers that verbal evidence would be desirable, it is in a position to request the witness to appear at an oral session. Such oral hearings as are held should take the form of discussion arising from the 'evidence-in-chief', already submitted and discussed among the commissioners. Such a procedure would certainly minimize the waste of time that is now occasioned by the presentation of almost identical briefs under the names of different persons or organizations. Such manifestations of pressure-group activity could speedily be disposed of without the attention of the full commission.

This rather drastic revision of commission procedure would involve correction of the impression that the representative of any 'interest' is entitled to 'his day in court'. Further, the notion must be dispelled that a 'case' may be won before a Royal Commission by skilful cross-examination of 'the other side'. The arguments for the greater use of written submissions rest on the assumption that the commission is trying to produce a valuable report with economy of time and expense.

Solicited evidence - Some of the larger commissions have requested individuals to prepare major studies to aid them. The Rowell-Sirois Commission (265) published a series of such reports as appendices, and the Massey Commission (298) has also called for expert surveys in its own field. But few commissions have invited ordinary submissions from the experts in the field: government employees, university teachers, and others with no financial or partisan interest in the outcome. One may be sure that those with an interest

in the nature of the report will be eager to testify. It is the responsibility of the commission to indicate, by making individual requests, that they would value a disinterested view. The Royal Commission on Prices stated in its report that...

"We invited twelve national organizations to present briefs. We did not confine ourselves to the information elicited at our public hearings. We consulted informally a number of private individuals and government officials who furnished us with pertinent and valuable material."

Counsel - A Royal Commission is often conducted or presided over by a judge; the Inquiries Act deals with oaths, and testimony and contempt. The judge and the lawyer have a ready technique of interrogation, which is perfectly understood by them and their 'learned friends'. It is not surprising that the lay members of a commission should often find themselves swept away during the initial meetings by a display of forensic competence. By the time they have recovered their breaths, the room is filled with counsel, one of whom is probably beginning a sentence with the words "If your Lordship pleases." (28)

- (28) The investigation into the Kyte Charges (167) was carried on in the tone of the court room, e.g. "Mr. J. A. Ritchie was duly sworn as clerk of the court" (P.13). The following quotation illustrates the role of counsel on such an occasion.

Sir Wm. Meredith (Commissioner) "The only question now is: Are the papers in Mr. Flavelle's possession?

Mr. Johnston (Counsel) "Yes. However they got there.

Mr. Nesbitt (Counsel) "They are not in his possession, if I may say so, Messrs. Commissioners. They may happen to be in the office he is occupying but they are not in his possession in any sense" (Author's italics) Report 1916, P.19.

The scale of employment of counsel is at times prodigious. In the 1936 Royal Grain Inquiry Commission (264) 2 counsel were retained on behalf of the commission, and 19 others appeared for various interests. Before the Textile Commission (263), conducted also by Mr. Justice Turgeon, a total of 16 counsel appeared. In his report the commissioner said that...

"the subject-matter of the enquiry is of a far-reaching character and in some of its aspects quite definitely controversial (29). Opportunity was, therefore, given to various interests concerned in the issue raised to be represented before me by counsel."

The implication appears to be that a lawyer is the only fit person to engage in a controversy. The interpretation of the law, and the framing of public policy require very different techniques, even though both should materially affect interested parties.

In the course of an inquiry matters may arise in which the effect of the detailed application of existing law is the point at issue. There can of course be no objection to the presence of expert legal advisor on such occasion any more than to the attendance of engineers when, for example, a problem of railway construction has arisen. Even in a matter as controversial as the disagreement between the railways and certain Provinces great reliance on lawyers does not seem desirable. The Provinces are basing their opinion on political justice and on logical analysis of the effects of 'discrimination', not upon an interpretation of the law which should properly be argued before the ordinary courts or the Board of Transport Commissioners. The Royal Commission should try to find a workable solution, not to determine on which side the balance of the evidence lies.

Special Tribunals - In the interests of clarity and brevity, Royal Commissions to investigate allegations and charges against organizations or individuals, will in this section be called Tribunals (see Section V).

What has been said above regarding procedure is not in the main applicable to Tribunals. Here a reputation, if not something much more serious is at stake. The Inquiries Act provides:

S.12 "The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of such investigation, to be represented by counsel."

(29) Author's italics. Report P.11.

The presence of counsel is not of course limited to such cases. A New Zealand decision (30) states that a Commission

"for its own assistance... may, if it thinks fit, permit the attendance of counsel for persons who are not parties in any true sense and may allow such counsel to examine or cross-examine witnesses."

The rights of witnesses before a commission are not protected by normal judicial rules. Such an assumption has at times been made; (a witness)

"goes before the Commission and is asked to give his evidence, he has only to say: I will not give evidence, because I am afraid that my evidence will convict myself. He has the permission everyone has under the English law, of refusing to give evidence which may convict himself" (31).

This issue is considered in the Report of the Royal Commission on Espionage (290). Section 4 of the Inquiries Act states:

"The commissioners shall have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine."

The Royal Commission concluded that:
"Under the Inquiries Act, Commissioners are given power by the sections above quoted (4 and 5) to compel a witness to speak, and to impose sanctions in case of a refusal. It would be a mockery of the law, and a derisive pronouncement, to hold that a witness must be given the warning 'that he is not obliged to speak...' and yet that he should be liable to imprisonment if he did not comply with the compulsory sections of the Act, which provide that he is liable to imprisonment if he refuses to take the oath and answer the questions put to him. In not warning the witnesses, we have followed the only legal course open to us." (32)

(30) Timberlands Woodpulp Ltd. v A-G. N.Z. Law Reports, 1934, P.270.

(31) Debates, House of Commons, 3 May, 1880, per Mr. McDonald (Pictou).

(32) Report 1946 P.672.

Part II Inquiries - Procedure for investigations under Part II of the Inquiries Act resembles that of Part I except that Section 10 provides a maximum penalty of a fine of \$400 on summary conviction for failure or refusal to assist the commission. Recommendations for changing the nature of Part II inquiries will be found in Section VIII.

Report - A Royal Commission, having been established by the Governor in Council, should present its report to him. The Royal Warrant frequently directs the commission to report to a Minister of the Crown, and this procedure is at times followed where no such direction is included. In order to assist in distinguishing the Royal Commission from the Departmental Inquiry (Part II commission) it is suggested that the former should in all cases address their report to the Governor General, the latter to the appropriate Minister.

VII. Administration

Administration Office - Most commissioners have only slight acquaintance with the working of governmental detail. The secretary is not necessarily a civil servant, and even if he is employed by the government he may not have the experience in many of the details that will have to be arranged. At present if the subject-matter of a commission falls within the orbit of a Department, the commission is attached to it for administrative purposes. There may be 2 or 3 major commissions each year, yet with some 20 Departments this would mean that each would administer a commission once in 7 or 8 years. Being abnormal and temporary, a commission frequently runs counter to established routine, and much time and patience is expended before an exception can be authorized. Almost every commission of recent years has experienced difficulties in financial administration, usually on the smallest of issues.

Accordingly it would seem that administration would be greatly simplified if one Department were designated 'liaison office' to all commissions. This Department would have legal, administrative and treasury officers all of whom were experienced in handling the business of commissions. These officials would not be required to devote their whole time to such duties, but they would study the precedents, make the contacts, and be responsible for solving administrative difficulties. In Section V (ii) it has already been suggested that this office should consider the necessity for certain types of inquiry. Other functions it might perform will be indicated below.

The 3 Departments which might be considered for such duties are: The Privy Council Office, the Department of Justice, and the Secretary of State Department. The first is central but very small, and a rush of commission business might overload it at a crucial moment. The Justice Department is well-equipped for the legal functions and has already been designated to supervise certain types of inquiry (See Section VIII). But it is not performing this function and might not be appropriate for the administrative tasks. The Secretary of State Department, already issues the Royal Warrants and is therefore interested in each Royal Commission. It has already provided administrative staff to several commissions, and it might well be chosen for the exercise of all the duties mentioned.

Staff, premises, etc. - The most important appointment to be filled is that of Secretary. It is essential that he should be acceptable to the commissioners, especially to the chairman. The latter should always be consulted before an appointment is made. At times a civil servant may be suitable, but this is by no means essential. The present Royal Commission on Transportation (297) has a secretary who was not a government employee at the time of his appointment. For major inquiries an assistant secretary might well be provided by the 'liaison office' mentioned above. The appointment would, of course, rest with the commission.

The engagement of other members of the staff - shorthand writers, stenographers, clerks, etc. - could be arranged by consultation between the secretary and the liaison office. The Department would have had some weeks, or even months notice of the appointment of the commission and many of the administrative provisions could have been commenced before the first meeting of the commission. Such matters as premises, telephones, furniture, stationery, etc. would fall into this category.

Finance - The 'liaison office' might make itself responsible for appropriations, though these could be charged to the Department in whose field the commission was to work. The secretary of the commission would have, for most matters, only a few officials in one Department to deal with and much more of his time, especially at the outset, could be devoted to the major interest of the commission.

Parliamentary control over monies spent on commissions of inquiry is very slight. Appropriations are normally covered by the 'unforeseen expenditure' vote in the estimates of the appropriate Department. Such sums are of course, approved by Parliament, but Mr. J. E. Hodgetts has pointed out this is largely a formality.

"Often the money has been spent before Parliament has authorized expenditure; ... normally expenses outrun estimates and then the executive

may resort to Governor-General's Warrant to cover costs until Parliament rates approval." (33)

Rates of pay of junior members of the staff would be laid down by the 'liaison office'. That of the secretary, if a civil servant, would probably be continued at its preceding level. If he were not a civil servant it would probably be agreed between the chairman and the Minister concerned. The remuneration of senior members of the staff and of the commissions themselves is a more difficult problem.

In England service on a Royal Commission is regarded as a public duty and is often unpaid; the chairman is usually presented with an engraved silver inkstand. (It should be noted that most commissioners give part-time service, and seldom leave London). In Canada various administrations have attempted to establish a general rule for remuneration of commissioners. An Order-in-Council (2648, 21st September 1897) fixed a maximum of \$10 per diem unless special authorization was made. P.C. 2996, 3rd Jan. 1912 (given in full in Appendix 'D'), raised this to \$15 per diem, plus living and travelling expenses. It was specifically stated that no professional man appointed commissioner should be entitled to a higher rate.

Such rates were not rigidly applied. Sir W. Mederith received \$5,000 (P.C. 1870/16) for the Shell Contracts Commission (167), and Mr. W.M. Ackworth received 3,000 gns. (P.C. 931/17) for the Transportation Commission (170). Since 1920 rates have continued to vary (34). Lord Ashfield, for his services on the (1931) Transportation Commission (240) received a total of \$24,979.04; Sir Edward Beatty, as Chairman of the (1929) Public Service Commission (230) received \$100 per diem, \$35 per diem living allowance, plus travelling expenses, and 2 other commissioners were paid \$100 per diem, \$20 living allowance plus travelling expenses; the unfortunate fourth member received only \$50 per diem plus living and travelling expenses. These sums are not cited as typical, (\$20-25 per diem plus allowances is a more normal figure); they do however indicate that the spirit of public service is not the sole motive which might cause an individual to welcome appointment as a commissioner.

(33) Hodgetts, J.E. ep. cit. P.27.

(34) For the period 1919-1949 a study has been made by Miss D. Leichnitz, of the Treasury Board staff, covering rates of pay and allowances to commissioners.

The 'liaison office' might well maintain a list of rates paid, for purposes of comparison when a new commission is under discussion. The list could also cover 'normal' fees for counsel and other expert assistance. Counsel have been known to receive as much as \$200 per diem, an amount that seems considerable even though a legal office has to be maintained.

Total costs - Once the rates of remuneration have been fixed and the procedure decided upon, comparatively little can be done to control the expenditure of a commission. Long oral hearings, held at many places, involving the transport of a large staff, including counsel, is bound to be an expensive proceeding. Some figures relating to the expenses of major Royal Commissions of recent years are given in Appendix 'D'. The figures run from \$9,500 to \$556,000. The 2 major commissions now in progress may well cost close to \$1,000,000.

Report - The work of the commission comes to an end when it presents its report.

"In Canada no legislative direction requires a copy to be laid before Parliament, but the practice is to present to the House of Commons reports of all commissions which functioned under Part I (35). Printing is done on the order of the House....."
"Part II inquiries reports are presented only after the House has ordered production."

The report of a Royal Commission, by its very nature, should be of sufficient importance to warrant printing without waiting for the order of the House. A great deal of time must be spent on preparing an unprinted document capable of being laid before the Government and the House, which might otherwise be spent in seeing it through the press. Work on certain sections could be completed while the commission was still in session on the final portions, and the secretary would be able to superintend the document into its final form.

There are strong arguments for uniformity in format for all reports. The existing variety of blue books, red books and black books makes custody and reference to public documents vastly more difficult. If the commission wishes the report to have wide public distribution, then the publication

(35) Watson Sellar ep. cit. This does not seem to be true of class 5 commissions.

of a simplified popular edition should be considered. The phraseology and content of a commission in its original form would normally need rewriting before it could become a 'best-seller'. However it was presumably on this assumption that the Royal Commission on Prices (295) insisted on the unusual design of its report. The report of the most important Royal Commission, on Dominion-Provincial Relations (265), was not printed, but was issued in mimeographed form, in a large number of ungainly red volumes. This recent desire for economy contrasts with earlier reports, which certainly erred on the side of generosity. The Report of the (1910) Royal Commission on Industrial Training and Technical Education (131) in 3 volumes, contained 1636 pages. The evidence of the (1892) Royal Commission on the Liquor Traffic (40) occupied 4,867 printed pages, while that of the Royal Commission on Price Spreads, (252) filled 8,277 pages.

The internal composition and arrangement could with advantage be made uniform. The front cover and title-page should bear the words, "Report of the Royal Commission on" The use of serial numbers in identifying public documents is of the utmost value. Some commission reports are given, in printed form, the number of a Sessional Paper, others have no serial number. The number should appear also on the front cover. Immediately following the title-page should appear a copy of the Royal Warrant and the Order in Council authorizing the commission. This should be succeeded by the letter of transmission, and, with long reports, a table of contents. Every report which exceeds a certain minimum length should be properly indexed.

Evidence - A commission is directed to produce a report. The commissioners are not obliged to disclose how the evidence was acquired. They may keep some submissions secret, as was done with the evidence of the Quebec government to the Pulpwood Commission (215). If it is submitted to the government in an unprinted form the decision to print would rest with the government. If the decision to print the report is made by the commission, then it could also decide how much, if any, of the evidence was also to be published. The Royal Commission on Price Spreads (252) was authorized (P.C. 1461, 7th July 1934) "to print the evidence, proceedings and documents received by the commissioners."

Custody of documents - Each commission adopts its own procedure for duplicating and distributing copies of evidence and exhibits. At the conclusion of the inquiry the secretary is left to dispose of his administrative files, and of the accumulated documents of the commission. These are normally handed over to the sponsoring Department for custody where they may be forgotten and allowed to disappear over the years.

Accordingly it is recommended that a minimum distribution list for evidence and documents be drawn up in the 'liaison office' and revised for each commission. The final distribution of original records should be arranged through the Public Records Committee, ultimately to be placed in the Archives. Their whereabouts should be reported at all stages to the liaison office.

It is inadvisable that original documents should be tabled in either House of Parliament. If the decision to print is made by the commission printed copies would be available for Parliamentary use.

VIII. Commissions to Investigate minor Charges and Allegations against Government Employees

The commissions referred to in this section are those of classes 4, 5 and 11. The more important of those of class 4 have already been discussed as deserving the status of Special Tribunals. Some of the remaining 40-45 commissions in this class might have been given this status if their importance at the time had appeared to warrant it. In retrospect it is not easy to assess the contemporary significance of a scandal. There remain the following:

Part I)	Class 4 (some)	45
)		
)	Class 5	178
Part II)	Class 11	<u>307</u>
	Total	<u>530</u>

From 1867 it was assumed that a commission was an appropriate instrument for investigating the misde- meanours and shortcomings of government employees and agents. Part II of the Inquiries Act was placed on the Statute Book in 1880 in order to simplify the procedure by which such inquiries could be made (see Section II). From 1880-1922 most inquiries of this type were estab- lished under Part II.

Partisanship Investigation - In the latter year, however investigations into charges of political partisanship were constituted a separate category. The Civil Service Act of 1918 (8-9 George V, C.12 now R.S.C. 1927, C.22 as amended), which applied also to civil servants located away from Ottawa, states:

No deputy head, officer, clerk or employee in the Civil Service shall be debarred from voting at any Dominion or provincial election if, under the laws governing the said election, he has the right to vote; but no such deputy head, officer, clerk or employee shall engage in partisan work in connection with any such election, or contribute, receive or in any way deal with any money for any party funds.

2. Any person violating any of the provisions of this section shall be dismissed from the Civil Service."

Procedure for investigating such charges was established by P.C. 1467 dated 22nd July, 1922, and was to consist of the appointment of a Commission under Sec.6 (Part II) of the Inquiries Act (R.S.C.1927 C.99). This was amended by P.C. 2125, 16th October, 1922, so that appointment is made under Part I of the Inquiries Act. (Copies of P.C. 1467/1922 and 2125/1922 are given in Appendix 'E'.) A further change in procedure was effected by P.C. 1423, dated 12th June, 1936, whereby cases of political partisanship are to be referred to the Minister of Justice before advice to establish a commission is tendered.

From 1922 to December 1949, 178 commissions issued to individuals, normally lawyers, to investigate charges of political partisanship. (This figure does not include cases where one commissioner was replaced by another, but does count 3 instances where political partisanship was not the sole subject to be investigated.) On 2 occasions 2 individuals were commissioned to undertake an inquiry, otherwise single commissioners have been employed.

The occurrence of partisanship investigations is closely related to federal elections, especially to those which occasion a change of government. In a twelve-month period commencing shortly after the 1930 election 50 inquiries were launched; in a similar period after the election of 1935 there were 69. Sixteen investigations were commenced in 1927; no other year saw the establishment of more than 5. Appendix B' gives a graphical representation of the incidence of commissions under classes 4, 5 and 11, together with dates of federal elections.

In some instances the commission related to a single case: e.g. P.C. 1977, 19th October, 1947, to investigate charges of political partisanship against Henri Archambault, keeper of lights at Windmill Point Traverse, P.Q. Normally the instructions were less specific: e.g. P.C. 1898, 1 November, 1924 "to investigate any charges of political partisanship that may be referred to him in any part of the Province of Quebec." It is possible, therefore, that a single commission covers a number of cases unrelated in time or location, and that such commissions are of indefinite duration. It was presumably on this assumption that P.C. 907, 20th April, 1936 cancelled all the appointments of partisanship commissions made under the previous administration.

The geographical incidence of partisanship inquiries is as follows:

P.E.I.	6
N.S.	18
N.B.	11
Que.	86
Ont.	28
Man.	6
Sask.	12
Alta.	4
B.C.	6
Not classified	<u>1</u>
Total	178

Appointment - Commissioners are appointed by Order in Council. Apart from legal experience there appear to be no special qualifications required, although it is to be presumed that the political views of the Commissioner would be ascertained. The Department of Justice does not maintain any lists of persons considered suitable for such appointments.

Remuneration - Payment of Commissioners for partisanship inquiries is fixed by P.C. 1921 of 14 September, 1922, at \$20 per diem. In at least one instance (No. 426) these rates were increased: by P.C. 2291 of 1927 and 274 of 1928 Colonel A. T. Hunter was to receive \$50 per diem and the payment of counsel, a secretary and a clerk was authorized.

Procedure - Apart from the Orders in Council already mentioned, there is no established procedure for such inquiries. Colonel Hunter, himself a barrister, observed that:

"The usual attempts of lawyers to dictate a hard and fast procedure, such as pertains to a law-suit, have been resisted. The value of the Inquiries Act would be nullified if precedents were created requiring the investigation to swing into the rut of a formal procedure as at Osgoode Hall. In this respect proceedings under the Inquiries Act resemble those of coroner." (36)

Reports - Reports are normally submitted through the Department which initiated the inquiry, and it is presumed that they are preserved in such Departments.

Action - The Department sponsoring the inquiry recommends action in accordance with the finding of the Commission. Dismissals are effected by Order in Council.

It should be noted that many dismissals on grounds of political partisanship are made without prior investigation by a Commission. Thus in the years 1922-1929 (inclusive) 35 commissions were established, and 454 dismissals were made. A Member of Parliament may bring charges against an employee which if they proceed from personal knowledge are sufficient to ensure dismissal. (See extracts from Hansard given in Appendix 'C') On the recommendation of the Member for Gaspé County, Que., 36 dismissals were effected between 12th October 1926 and 14th April 1927.

Other charges - The partisanship commissions have been treated at some length, because they form the largest uniform group of such inquiries, and because many of the earlier class 11 inquiries were also devoted to partisanship charges. This can be seen by the marked falling away of class 11 charges after 1922:

	1890- 99	1900- 09	1910- 19	1920- 29	1930- 39
Class. 11	94	28	85	32	29
Class 5	--	--	--	35	137

Even more remarkable is the fact that during 1940-9 only 9 inquiries were launched under classes 5 and 11 combined. This was less than one-third the number of such inquiries in any other decade since 1880.

The other charges preferred against employees are of a miscellaneous disciplinary nature. Lightkeepers accused of drunkenness, Indian Agents who have failed to perform their duties; the details of the offence are often unspecified in the Order in Council which authorizes the inquiry.

The procedure of class 11 seems to follow that of class 5. Section 12 of the Inquiries Act, relating to

has become notorious or involves persons in high places. In 'peak' years scores of commissioners may be appointed, and the process wears the appearance of a 'purge'. Publicity is normally lacking since the inquiries are frequently held in camera and reports are not normally published. The power to compel evidence is not of much use. The complainant will be willing to testify and the defendant, since he is a government employee, may be so compelled by administrative order.

It is difficult to avoid the conclusion that the commission method of investigation of charges provokes the illusion but not the reality of an adequate procedure. This is not to say that the majority of investigations has been improper, it merely affirms that there are no checks on impropriety other than the character and ability of the sole commissioner.

It is therefore recommended that class 5 and class 11 inquiries in their present form be discontinued, or, since there have been few in recent years, be not revived. In their place 2 types of inquiry might be used.

i) Part II Commission. - In cases not sufficiently serious for the creation of a Special Tribunal, yet involving certain important issues, or where other than government employees are involved whose willingness to give evidence is doubtful, or where the administration of an oath appears necessary to obtain truthful evidence, the Part II commission might be employed. But it should consist of at least 2 members, one to be a lawyer and not more than one to be a civil servant. The person charged should be allowed the assistance of counsel or, if he so desires, a representative of a recognized employee association. A summary of the evidence should be recorded and transmitted with the report to the 'liaison office'. If the charges are sustained the report, though not necessarily the evidence, should be published in some form. This would dispel any suspicion that the commission had been a partisan tool in the hands of the government, and would stand as a warning to other would-be offenders.

ii) Civil Service Commission - The Civil Service Commission is charged with the administration of the Civil Service Act, Section 55 of which relates to partisanship. Other Sections provide safeguards against wrongful dismissal or suspension, in which the Civil Service Commission is intimately concerned with

preventing any bias against the employee. The Civil Service Commission has also organized a system whereby an Appeal Board considers the case of employees who feel aggrieved at having been passed over in a promotional competition. Such hearings often have to listen to allegations of partiality and discrimination. The Appeal Board is composed of a senior member of the staff of the Civil Service Commission as chairman, a representative of an employee association, on behalf of the employee, and a representative of the Department in which the promotion is to be made.

Such a procedure could easily be adapted to class 5 and class 11 charges. The investigation would be thorough; a member of the Department is on the Board. The employee is represented by an association official who is likely to be more useful and less expensive than a lawyer. (If considered desirable an appeal could be allowed to the Civil Service Commission itself.) In such hearings there would be no need for publicity, except that the Civil Service Commission might publish in its annual report the number of cases and the proportion in which charges were sustained.

It has already been suggested (Section V, C.2) that the liaison office should scrutinize the evidence before a commission issues for the investigation of charges against government employees. In the case of Civil Service Commission inquiries this would not be necessary, as the Commission could undertake the task of eliminating baseless accusations.

employee

Departments initiating class 11 inquiries -
The nature of the charges is such that they are most likely to occur where a government is in an isolated position, not subject to close supervision, and where he comes into contact with members of the public. Thus it might be thought that these inquiries would be roughly proportional to the numbers of such employees in each Department. The Post Office, Public Works, Agriculture, Mines and Resources, Transport, National Revenue and Fisheries Departments would be expected to make considerable use of such commissions. The figures, however are somewhat surprising:

the assistance of counsel, is effective for inquiries under both Parts. A single commissioner is normally employed, and he is often a civil servant. The effect of the issue of a commission is therefore merely to add somewhat greater powers than would be available to a senior official holding a purely administrative investigation.

Political motivation - Considerable criticism has been directed against these inquiries, under Part II and their successors, especially in partisanship cases.

In a Senate Debate they were described as being, "for the purpose of investigating, and either finding out or inventing scandals that come handy against the preceding administration ...".

Of the Commissioners who conducted such inquiries Sir R. Cartwright said,

"Unless I am very gravely misinformed, the gentlemen who have been appointed to conduct these investigations, could by no possibility be considered as anything else than extreme partisans, having the strongest bias and the strongest desire to make good the accusations which they had been for a long time levelling against the preceding government." (37)

The aims of any inquiry into charges against a government employee must be; firstly to ascertain the truth of the charge, that proper disciplinary action may be taken where necessary; secondly to protect the employee from unfair attack by those who bear malice toward him from personal or partisan motives; and thirdly to protect the public by the assurance that irregularities are not permitted to proceed unchecked.

There are advantages in having a Royal Commission investigate allegations of serious misconduct. They arise from the supposed impartiality of this method; from the greater importance and consequent publicity of a Royal Commission in comparison with a routine official inquiry, and from the power under the Inquiries Act to compel testimony, and to administer oaths. None of these applies to any great extent to minor irregularities or to partisanship charges, unless the incident concerned

Departments initiating class 11 inquiries,
1880-1949

Marine and Fisheries (Fisheries)	116
Transport (Railways and Canals)	53
National Revenue (Customs, Inland Revenue)	50
Mines and Resources (Interior, Indian Affairs, Immigration and Colonization)	24
Public Works	18
Post Office	16

No other Department initiated more than 7 inquiries.

A similar analysis is not available for class 5, but undoubtedly the Department of Marine and Fisheries continued to appoint far more than any other Department; and a substantial proportion of these inquiries was into the conduct of lightkeepers.

IX. Inquiries into the Revocation of Naturalization Certificates (Class 6)

Inquiries by commission commenced under the authority of 10-11 George V c.59 (1920), which became RSC 1929 c.138. This has now been replaced by 10 George VI c.15, the Canadian Citizenship Act (1946). The form of the inquiry has been slightly changed, but the substance is still in use at the present time.

The relevant sections of the Canadian Citizenship Act read:

S.21 "(1) The Governor in Council may order that any person other than a natural born Canadian citizen shall cease to be a Canadian citizen if, upon a report from the Minister

"(2) The Minister before making a report under this section shall cause notice to be givento the person in respect of whom the report is to be made, giving him an opportunity of claiming that the case be referred for such inquiry as is hereinafter specified....

"(3) An inquiry under this section shall be held by a commission constituted for the purpose by the Governor in Council upon the recommendation of the Minister, presided over by a person appointed by the Governor in Council who holds or has held high judicial office, and shall be conducted in such manner as the Governor in Council shall order. Provided that any such inquiry may be held by the superior court of the province in which the person concerned resides, and the practice and procedure on any inquiry so held shall be regulated by rules of court.

"(4) The members of any commission appointed under this section shall have all powers, rights and privileges as are vested in any superior court or in any judge thereof on the occasion of any action in respect of

(a) enforcing the attention of witnesses and examining them on oath, affirmation or otherwise, and the issue of a commission or a request to take evidence abroad;

(b) compelling the production of documents;
and

(c) punishing persons guilty of contempt;
and a summons signed by one or more members of the
Commission may be substituted for and shall be
equivalent to any formal process capable of being
issued in any action for enforcing the attendance
of witnesses and compelling the production of
documents".

In 1938 the commission requested amplification
of its procedure to be laid down by Order. This was
done by P.C. 3025, 2nd December, 1938:

"NOW, THEREFORE, His Excellency the Governor
General in Council, on the recommendation of the
Secretary of State, is pleased to make and doth
hereby make the following regulations and directions
concerning the conduct of inquiries by the said
Commission;—

- 1- The Commission may act, notwithstanding any
vacancy in their numbers or the absence of
one member thereof and two members shall be
a quorum, but the Commission may delegate
to one or more of their number their powers
of holding sittings for the purpose of
making inquiries and taking evidence and
any powers in relation thereto.
- 2- The Commission may, if they think fit, invite
any department of the Public Service of
Canada which appears to them to be interested
to appoint a person to represent the department
at any inquiry and a representative of that
department may attend such inquiry accordingly.
- 3- Subject to the provisions of the Naturalization
Act, and those directions, the Commission shall
have power to settle and determine the procedure
at all inquiries held by it."

X. Commissions appointed under the Judges Act (Class 7)

This type of inquiry has been in use over a long period. Although the wording has been changed substantially the same form is included in R.S.C. 1886, C.138, R.S.C. 1906, C.138, and R.S.C. 1927, C.105. The present source is 10 George VI C.56, which reads:

S.31 "(1) The Governor in Council may, for the purpose of making an inquiry pursuant to sections twenty-nine or thirty of this Act, issue a commission of inquiry to one or more judges of the Supreme Court of Canada or of the Exchequer Court of Canada, or one or more judges of any superior court, empowering him or them to make such inquiry and to report, and may by such commission confer upon the person or persons appointed full power to summon before him or them any person or witness and to require him to give evidence on oath, orally or in writing or on solemn affirmation if he is entitled to affirm in civil matter, and to produce such documents and things as the commissioner deems or the commissioners deem requisite to the full investigation of the matters into which he or they are appointed to inquire.

(2) The commissioner or commissioners shall have the same power to enforce the attendance of any person or witness and to compel him to give evidence as is vested in any superior court of the province in which the inquiry is being conducted.

(3) Any finding or order of the Governor in Council made pursuant to sections twenty-nine or thirty of this Act and all reports, evidence and correspondence relating thereto shall be laid before Parliament within the first fifteen days of the next ensuing session."

Section 29 relates to a judge who is found incapacitated or disabled. His salary may be stopped by the Governor in Council on a report from the Minister of Justice,

"if the facts respecting the incapacity or disability are first made the subject of inquiry and report as provided in section thirty-one of the Act, and the judge is given reasonable notice

of the time and place appointed for the inquiry and is afforded an opportunity by himself or his counsel of being heard thereat and of cross-examining witnesses and adducing evidence on his own behalf."

S.30 "A judge of a county court or the Circuit Court of the District of Montreal may be removed from office by the Governor in Council for misbehaviour, or for incapacity or inability to perform his duties properly by reason of age or infirmity, if the facts respecting the misbehaviour, incapacity or inability are first made the subject of inquiry and report...." (as in Sec. 29 above).

XI. Commissions appointed under the Combines Act (Class 8)

Commissions have issued for the investigation of combines since the early years of the present century, but the exact form of inquiry has been considerably altered. The procedure is now governed by 13-14 George V C.9 (now R.S.C. 1927, C.26) as amended by 1 George VI C.23 (the Combines Investigation Act Amendment Act 1937). It will be noted that the provision of the Inquiries Act were also invoked.

S.12 "Whenevor such application shall be made to the Registrar, or whenever the Registrar shall have reason to believe that a combine exists or is being formed, or whenever so directed by the Minister, the Registrar shall cause an inquiry to be made into all such matters whether of fact or of law, with respect to the said alleged combine as he shall consider necessary to inquire into with the view of determining whether a combine exists or is being formed."

If on receipt of such report the Minister decides that further investigation is necessary, a commissioner or commissioners may be appointed, (Sec.6 (3), 13 and 16) by Order in Council.

S.16 "Every commissioner shall have authority to investigate the business, or any part thereof, of any person who is or is believed to be a member of any combine or a party or privy thereto, and who is named in the Order in Council appointing the commissioner, and to enter and examine the premises, books, papers and records of such person."

S.18 "All provisions of the Inquiries Act not repugnant to the provisions of this Act shall apply to any inquiry or investigation under this Act, and the Registrar and every Commissioner shall have all the powers of a commissioner appointed under the Inquiries Act, including the powers which are thereby authorized to be conferred by the commission in the case, except in so far as any such powers may be inconsistent with the provisions of this Act."

S. 28 "Any report of a commissioner, other than an interim report, shall within fifteen days after its receipt by the Minister be made public, unless the Commissioner is of the opinion that the public interest would be better served by withholding publication and so states in the report itself, in which case the Minister may exercise his discretion as to the publicity to be given to the report in whole or in part."

By 1 George VI C.23 (the Combines Investigation Act Amendment Act) the Registrar is replaced by a Commissioner who exercises also the duties previously performed by the commissioner, referred to above (New Section 5 (1) and Section 4, 5 and 6 of the Amending Act.) By new Section 7,

"(1) The Governor in Council may appoint from time to time, one or more persons to be special commissioners under this Act.

"(2) It shall be the duty of a special commissioner to conduct an investigation into and concerning any alleged combine indicated in the Order in Council signifying his appointment."

XII. Commissions to investigate Industrial Disputes
(Class 9)

The main form of inquiry into industrial disputes has been through Boards of Conciliation and Arbitration. But from 1899 a series of commissions has issued for this purpose. Acts of 8-9 George I C.27 and 10-11 George V C.29 (amendments to the Industrial Disputes Investigation Act 6-7 Edward VII C.20) invoked the powers of the Inquiries Act for such investigations. These amendments are now incorporated in R.S.C. 1927 C.112.

S.65 "Where in any industry any strike or lockout has occurred, or seems to the Minister to be imminent, and in the public interest or for any other reason it seems to the Minister expedient, the Minister, ... either with or without an application from any interested party, (may) recommend to the Governor in Council the appointment of some person or persons as commissioner or commissioners under the provisions of the Inquiries Act to inquire into the dispute, strike or lockout, or into any matters or circumstances connected therewith."

The use of the commission of inquiry was extended by P.C. 4020, 6th June, 1941, and P.C. 496, 19th January, 1943. These vested appointment in the Minister, and although reference to the Inquiries Act was made, it is not certain if Part I could be held to apply.

Ministerial appointment was continued, however, in the Industrial Relations and Disputes Investigation Act (1948) reference to the Inquiries Act was omitted. 11-12 George VI C.54 reads:

S.56 "(1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters,"

(2) For any of the purposes of subsection one of this section or where in any industry a dispute or difference between employers and employees exists or is apprehended, the Minister may refer the matter involved to a Commission, to be designated as an Industrial Inquiry Commission, for investigation thereof, as the Minister deems expedient, and for report thereon; and shall furnish the Commission with a statement of the matters concerning which such inquiry is to be made, and, in the case of any inquiry involving any particular persons or parties,

shall advise such persons or parties of such appointment.

(3) Immediately following its appointment an Industrial Inquiry Commission shall inquire into the matters referred to it by the Minister and endeavour to carry out its terms of reference; and in the case of a dispute or difference in which a settlement has not been effected in the meantime the report of the result of its inquiries, including its recommendations, shall be made to the Minister within fourteen days of its appointment or such extension thereof as the Minister may from time to time grant.

(5) An Industrial Inquiry Commission shall consist of one or more members appointed by the Minister and the provisions of sections thirty-three and thirty-four of this Act shall apply, mutatis mutandis, as though enacted in respect of that Commission and the Commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations."

S.33 "(1) A Conciliation Board shall have the power of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation, if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the Conciliation Board deems requisite to the full investigation and consideration of the matters referred to it ...

"(2) A Conciliation Board shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

"(3) Any member of a Conciliation Board may administer an oath, and the Conciliation Board may receive and accept such evidence on oath, affidavit or otherwise as it in its discretion may deem fit and proper whether admissible in evidence in a court of law or not."

XIII. Commissions to Inquire regarding Dominion Lands
(Class 12)

Inquiries regarding Dominion lands begin immediately after Confederation. However, they occur in very large numbers during the period from 1910 to 1924. Nearly all of these investigations were concerned with the non-fulfillment of homestead duties. After 1927 such investigations were made administratively, and no further commissions issued for this purpose. Other inquiries relating to Dominion lands have taken place under the authority of 7-8 Edward VII c.20, the Dominion Lands Act (1908), (now RSC 1927, c.113). Under Section 74 the Governor in Council may --

"in connection with any question in respect to Dominion lands, authorize any person or persons to summon before him or the, any person by subpoena issued by him or the, examine such person under oath, and compel the production of papers and writings before him or them; and if any person duly summoned neglects or refuses to appear at the time and place specified in the subpoena, legally served upon him, or refuses to give evidence or to produce the paper or writings demanded of him, the person or persons so authorized may, by warrant under his or their hand or hands, cause such person, so neglecting or refusing, to be taken into custody and to be imprisoned in the nearest common gaol, as for contempt of Court, for a term not exceeding fourteen days....."

XIV. Commissions under the Canada Shipping Act (Class 13)

Provision for formal investigation of wrecks was made by the Wrecks and Salvage Act (1869), and is now succeeded by the Canada Shipping Act (RSC 1927 c. 186). S. 762 reads:

"(1) The Minister may appoint any officer of the Government of Canada, or any Judge of any Court of Record, or any local Judge in Admiralty or the Exchequer Court of Canada, or any Stipendary or Police Magistrate, to be a Commissioner to hold formal investigations or any formal investigation, and a Commissioner shall for that purpose be a Court.

"(2) In any case arising before or after the passage of this Act, which the Minister considers to be of extreme gravity and special importance, he may appoint two or more fit persons to be Commissioners to hold a formal investigation, and the Commissioners so appointed shall, for that purpose, be a Court, and such Court shall, in addition to its judgment, make a full and detailed report to the Minister upon the circumstances of the case, and may take such recommendations as may in its opinion be proper in the premises."

The formal inquiries under this Act can be initiated by the Minister, and since 1920 the instrument of an Order-in-Council does not seem to have been used. Thus the inquiry into the "NORONIC" fire was not authorized by such an Order, and consequently is not included in the totals in Table 1.

XV. Summary of Conclusions and Recommendations

The recommendations contained in this report are intended to be considered as a whole. As they have been introduced throughout the various Sections it may be convenient to summarize them here.

- 1) As a technique of executive inquiry the commission has great advantages. In order that these may be maintained it is essential that the device should not be employed too frequently or for trivial matters.
- 2) The Royal Commission with its great prestige, should be reserved for major inquiries into matters of great public importance.
- 3) Similarly, other forms of commission should issue only when simpler types of administrative inquiry cannot be employed.
- 4) The terms of reference given to the commission should reveal explicitly the exact purpose of the inquiry. The commission should know how far it is intended to be a sounding-board of public opinion. As far as possible the task of the commission should be to produce a report.
- 5) Special Tribunals, as a type of Royal Commission, should be established as a semi-judicial method of investigating major allegations regarding public affairs. Their form should be written into the Inquiries Act, to be brought into operation by Joint Resolution.
- 6) The Civil Service Commission should assume responsibility for investigating most minor charges against government employees.
- 7) One Department should be designated 'liaison office' to deal with matters of law, administration and finance for all commissions.
- 8) The liaison office should issue a memorandum on administration and procedure for the information of every newly appointed commission.
- 9) Each commission should be advised carefully to consider its procedure before commencing to gather information.

10) The chairman of a commission should control administration and procedure, and be responsible for keeping within pre-determined bounds of relevance.

11) The use of written and solicited evidence should be increased.

12) The public oral hearings should be used to amplify written evidence and should not be converted to the use of publicity-seeking pressure groups.
(There are exceptions to be made to this suggestion.)

13) The judicial nature of inquiries should be diminished, by appointing fewer judges and lawyers, and giving less scope to counsel.

14) The form of all reports should be similar.

15) Proper arrangements should be made through the liaison office for the custody of original documents and records.

Appendix 'A'

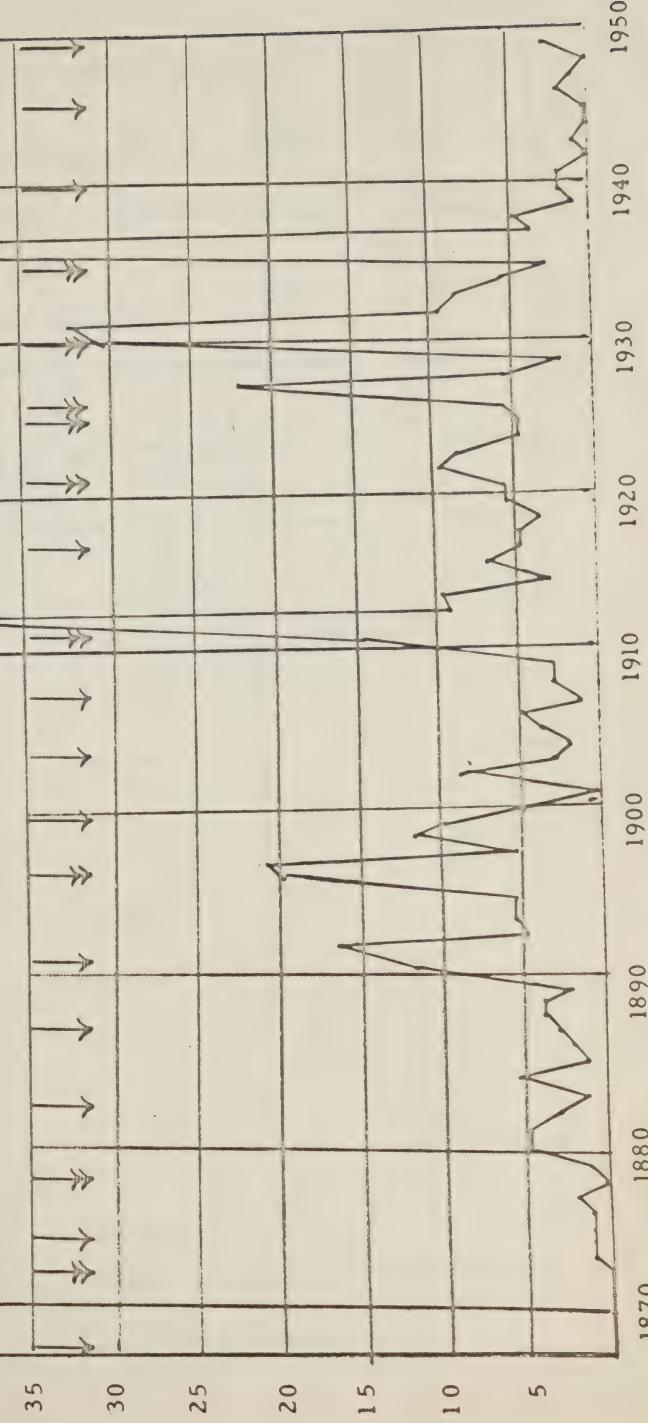
Classified List of Commissions of Inquiry 1867-1949

Appendix 'A' consists of a list of commissions of classes 1-11, showing the names and occupations of commissioners, the Order in Council which initiated the inquiry and the details of the report, where available. The classification adopted was devised for the purposes of the present study. Attention has already been drawn to the possibilities of inaccuracy in the list (see Section I). The list relates to some 900 inquiries and because of its considerable length is not reproduced with the text of the report. A limited number of copies is available, but wide distribution wouldnot seem desirable without furthor verification.

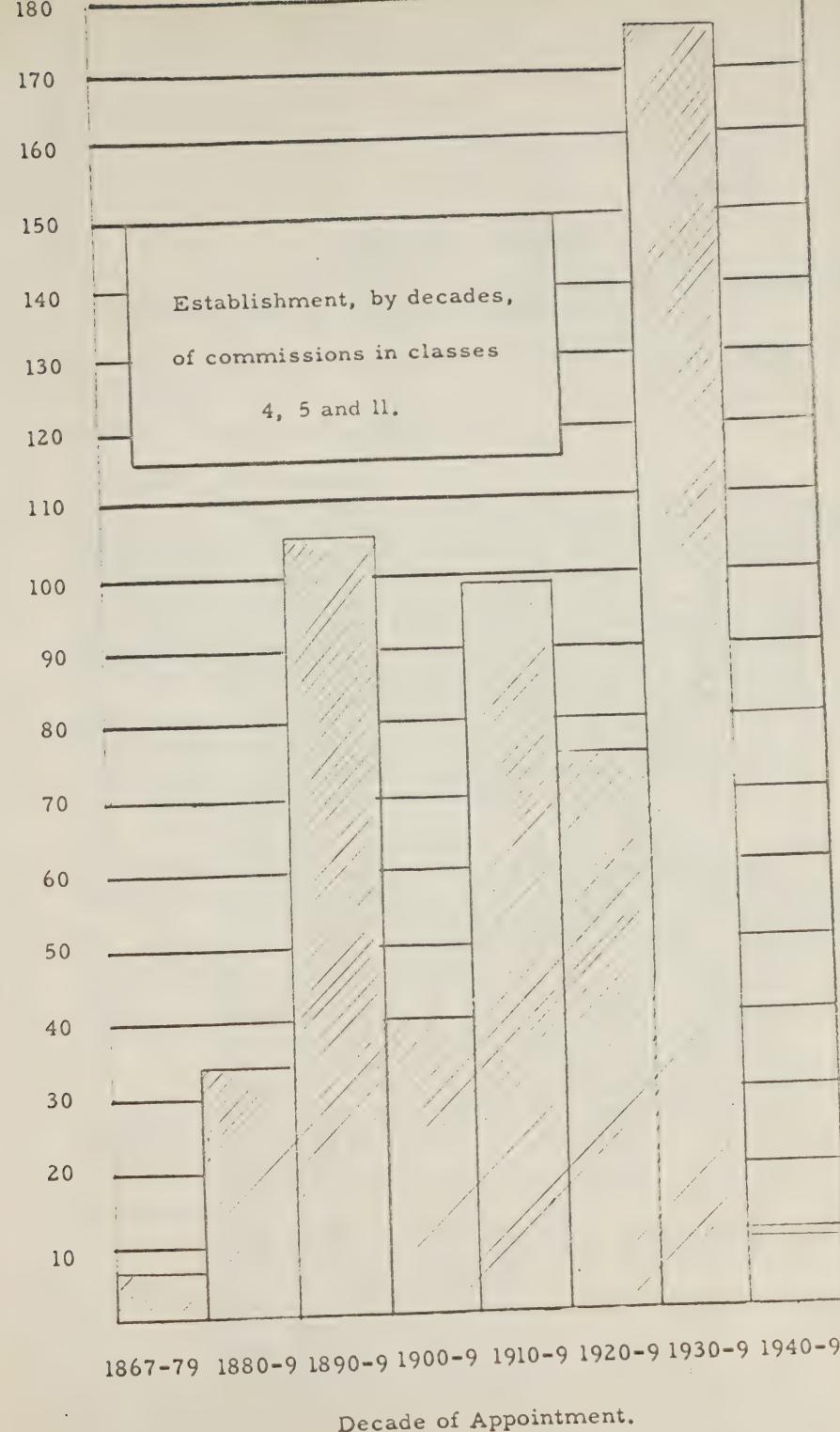
Establishment, by years, of commissions
to inquire into charges of misconduct,
partizanship and irregularities,
(classes 4, 5 and 11).

↓ = Year of federal election

↓ = Election causing change of government.



Number of Commissions.



Appendix 'C'

TERMS OF REFERENCE

The following have been chosen to illustrate different types of terms of reference.

The first example is elaborate and extremely detailed:

1903 - Transportation. (95)

P.C. 583 19 May 1903.

"On a report, dated April 6, 1903, from the Minister of Public Works stating that he has had under consideration questions affecting the transportation of Canadian products to the markets of the world through and by Canadian Ports with the view of placing the Canadian producer in a position to compete, and compete successfully, through all-Canadian channels with the producers and exporters of other countries.

The minister submits that it may be assumed that grain and other products will naturally seek their markets by the cheapest routes, and therefore, the method of attaining the object desired should be to make the Canadian routes cheaper and more convenient than competing routes.

That the development of north-western Canada has manifested the inability of existing Canadian transportation agencies to take care of Canadian products.

That our agricultural exports can only command the prices over seas, to which their natural excellence entitles them, when they cease to be confounded and confused with the inferior and often adulterated articles produced elsewhere, and to preserve their separate identity they must go through Canadian channels.

The minister further states that the questions to be considered are complicated and involved, including among the objects to be sought, the transportation of western products from place of production to the markets of the world.

This involves the consideration of their transportation:

From place of production to Canadian seaports.

From place of production to western ports of Lake Superior.

From the western ports of Lake Superior to Canadian seaports.

From Canadian seaports to Europe.

From place of production through Canadian ports on the Pacific.

As it affects the products of the eastern provinces of Canada it involves their movement:
To the seaports.

From the seaports to Europe.

It is obvious, that, before any satisfactory conclusion can be reached upon these questions, a thorough and comprehensive inquiry should be made regarding:

The conditions of original shipment and the possibilities of improvement in the conditions surrounding such shipments.

The storage requirements of lake, river and ocean ports.

The harbour facilities of the inland lakes, rivers and Atlantic and Pacific ports.

The conditions with regard to the navigation of the St. Lawrence route, and generally any improvement, enlargements or other matters affecting the more economical and satisfactory uses of any Canadian channel of transportation by land or water.

The minister further states that in making such investigation, attention should not be confined to routes and facilities which are at present utilized, but if necessary new surveys should be made to determine whether any more economical and satisfactory channels of transportation by land or water can be opened up.

The forces operating against the attainment of all-Canadian transports, namely:

Competition by United States railways.

Competition by United States vessels from Lake Superior ports.

Diversion of Canadian products through eastern outlets to Boston, Portland and other United States ports, should be investigated and the best and most economical methods used by our competitors should be carefully studied and reported upon.

The minister apprehends that in these circumstances it devolves upon the Dominion government to consider and adopt the best possible means of promoting such measures as may enable Canada to control the transportation of its own products, and it is thought that the most efficient method of conducting such inquiry and obtaining the required information is by means of a commission of competent and experienced experts who may be appointed and authorized under the provisions of chapter 114 of the Revised Statutes of Canada."

The next example is so broad as to be capable of leading in any direction.

1915 - Lougheed Commission (159)
P.C. 2436 19 October 1915

"To consider, inquire into and report upon important methods of production in Canada, especially agricultural production and the methods suitable to

various localities; the distribution and transportation of products to home markets and the opportunities thus created between the several provinces of the Dominion; the transport of products of Canada to Canadian national ports and thence to markets abroad; the manufacture of such products in Canada; the opportunities for immigration with a view to including the settlement of an agricultural population upon the fertile and uncultivated lands of both western and eastern Canada; the employment necessary for extending and developing agriculture and manufacturing industries and any kindred subjects which may soon directly connected therewith."

There follows a sample of a narrower inquiry, precisely defined.

1929 - Technical and Professional Services. (230)

"We were appointed to enquire into rates of salaries, pensions, etc., of technical and professional officials of the Civil Service of Canada as compared with such rates applying to similar positions outside of the Civil Service in Canada, and to report to the Government as to readjustment of existing classifications and remunerations, and to make such other observations with regard to salaries generally in the Civil Service as the Commission may consider relevant.'

"By a supplementary Commission we were authorized to include within the scope of (our) enquiry officers of the Government service above mentioned (Civil Service Commissioners, Pension Commissioners, Railway Commissioners and all officers having the rank of Deputy Minister) and also all such employees of the Government whether subject to the Civil Service Act or not.'

"We were also authorized by the supplementary Commission to report as to which employees come within the designation

"professional and technical officers." "

In contrast to the 1903 Commission that of 1931 is vague in the extreme.

1931 - Transportation. (240)

P. C. 2910 20 November 1931.

"That the Commissioners inquire into the whole problem of transportation in Canada, particularly in relation to railways, shipping and communication facilities therein, having regard to present conditions and the probable future developments of the country, and report their conclusions and make such recommendations as they think proper."

Remuneration of Commissioners

P.C. 2996/1911 approved 3 January 1912

"The Committee of the Privy Council have had under consideration the question as to the rate of remuneration which should be allowed Commissioners appointed or to be appointed to hold enquiries or investigations under the Inquiries Act, Chapter 104 of the Revised Statutes of Canada, 1906.

"The Committee advise that, except in cases otherwise provided for by Order in Council, the fees allowable to a Commissioner appointed under the authority of the above mentioned Act shall not in any case exceed fifteen dollars for each full day's attendance or occupation in connection with the work of the Commission, exclusive of the reasonable moving and living expenses of the Commissioner to be allowed where he has to travel for the purpose of executing the commission; and that the said per diem allowance shall be deemed to cover letters and interviews on other days as well as on the days for which the Commissioner is entitled to such per diem allowance; and that no further charge be allowed for such letters and interviews; and that a professional man shall not be entitled to any fees or allowances as Commissioner to which other Commissioners are not entitled as aforesaid.

"The Committee also advise that a copy of this Minute be sent to every Commissioner hereafter to be appointed, with his Commission, or the notification of his appointment, and that such Commissioner be at the same time informed that the provisions of this Order in Council will be strictly followed in ascertaining the amount to which he may be entitled for his services as Commissioner.

"The Committee further advise that the Order in Council (P.C. No. 2648), of the 21st September, 1897, fixing the rate of remuneration of Commissioners appointed to hold enquiries into public matters or departmental business, be cancelled."

Expenditure of Royal Commissions.

1921 Grain Trade (205)

Commissioners - Remuneration & Travelling Expenses	\$9,846.31
Other salaries & Travelling Expenses	8,008.95
Reporter - Remuneration & Travelling Expenses	705.50
Legal Services	21,071.93
Accounting Services	1,535.42
Other expenses	5,205.01
	<u>\$46,373.12</u>

1928 Radio Broadcasting (228)

Commissioners - Remuneration & Living Allowance	\$28,390.00
- Travelling expenses	5,234.47
Secretary - Living Allowance	2,685.00
- Travelling Expenses	1,569.36
Printing & Stationery	888.11
Other expenses	6,781.72
	<u>\$45,548.66</u>

1929 Public Service (Technical & Professional Services (230))

Commissioners - Travelling Expenses	\$2,098.80
Other Travelling Expenses	1,112.49
Printing & Stationery	589.75
Reporters & Stenographers	5,514.30
Other Expenses (The remuneration of the Commissioners does not appear to be included)	204.02
	<u>\$9,519.36</u>

1930 Transportation (240)

Commissioners - Remuneration	\$30,000.00
- Travelling Expenses	22,192.57
Travelling Expenses of Staff	9,221.09
Salaries - Secretarial etc.	24,971.40
Clerical Assistance	2,435.35
Sundry Expenses	3,565.38
	<u>\$92,385.79</u>

1933 Banking & Currency (245)

Commissioners - Travelling Expenses	\$5,269.43
Staff - Salaries	719.39
- Travelling Expenses	2,433.66
- Honoraria	1,150.00
Transportation	8,435.32
Reporters - Remuneration & expenses	11,401.25
Miscellaneous	1,544.36
	<u>\$30,953.41</u>

1937 Dominion - Provincial Relations (265)

Commissioners - Fees	\$41,850.00
- Travelling Expenses	26,689.60
Staff - Salaries	264,586.31
- Travelling Expenses	39,610.42
Reporters	9,940.50
Legal Fees	24,895.00
Printing & Stationery	103,555.06
Other expenses	45,175.34
	<u>\$556,302.23</u>

1938 Bren Gun Contract (268)

Salaries of Secretary & others	\$1,332.83
Legal Fees	13,105.00
Audit Fees	4,100.00
Reporter	5,436.15
Living & Travelling Expenses	4,845.05
Other expenses	304.59
	<u>\$29,123.62</u>

1948 Prices (295)

Commissioners - Fees	\$17,885.00
- Travelling expenses	6,626.69
Staff - Salaries	10,623.34
Other Travelling Expenses	12,381.12
Legal Fees	16,000.00
Accounting Fees	8,175.00
Printing & Stationery	48,261.41
Other expenses	22,066.15
	<u>\$142,018.71</u>

Figures supplied by the Department of Finance.

Appendix 'E'

P. C. 1467 22 July 1922

"The Committee of the Privy Council have had before them a report from the Right Honourable the Prime Minister, representing that, in view of the large number of charges of political partisanship which have been made against Government Officials in different parts of the country, whose dismissal is asked for by the complainant, it is advisable in the public interest, that a course of procedure should be defined for dealing with such charges, in a manner which, whilst giving effect to the intent of the existing legislation respecting political partisanship, will, at the same time, avoid the possibility of injustice being done any member of the public service.

"The Prime Minister, therefore, recommends that the following procedure be adopted, viz:

1. That only such charges of political partisanship as may be made specifically in writing against an official of the Government shall be deemed deserving of consideration.
2. That, without in any way superseding or suspending the power conferred by existing legislation, when a specific charge of political partisanship is made in writing, against an official of the Government, if the Act complained of is, in the opinion of the Minister, of a character to constitute 'engaging in partisan work' within the meaning of Section 32, Chap. 12, George V.1918, an Act respecting the Civil Service of Canada, such charge may be referred by the Minister of the Department in which such official employed, to a Commissioner for investigation and report.
3. That for the purpose of such investigation and report, should the number of complaints so warrant, one or more Commissioners may be appointed in each of the several Provinces under the provision of Section 6 of Ch. 104 Revised Statutes of Canada, 1906, an Act respecting Public and Departmental Enquiries."

P. C. 2125 16 October 1922

"The Committee of the Privy Council, on the recommendation of the Right Honourable, W. L. Mackenzie King, the Prime Minister, advise that the Order in Council (P. C. 1467) of the 22nd July, 1922, be amended by substituting for paragraph numbered three the following paragraph, namely:

3. That for the purpose of such investigation and report should the number of complaints so warrant, one or more commissioners may be appointed in each of the several provinces under the provisions of Part I of the Inquiries Act, Chapter 104, Revised Statutes 1906."

Hansard - 6th December, 1911 - Page 894

Sir Wilfrid Laurier - "I beg my hon. friend's pardon. we said in 1896 that no man should be dismissed unless he was first given the opportunity of being heard. But I said also that we would accept the written statement of a member of parliament, giving the facts and asking for the dismissal. This is the rule we laid down and we have lived up to it. I am told by hon. gentlemen opposite that we did not live up to that rule. I do not admit the charge. I think we did, but even if we were deficient I would expect that the hon. gentlemen who are on the treasury benches at present would at least act according to their own doctrines. Are they going to throw over their own doctrine and institute dismissals right and left without giving any man the opportunity of defending himself or without any member of parliament taking the responsibility of placing on record a charge against the man whose dismissal he seeks? I would insist on the leader of the government that he should enforce the rule that no man should be deprived of office without being given the opportunity of defending himself or at least unless the member of parliament who asks for his dismissal has the courage to put on record the reasons why he demands it."

Hansard - 15th February, 1923 - Page 286

Mr. Mackenzie King - "In some cases charges have been preferred against certain officials by hon. members of this House. Where an hon. member has been prepared to state to the House that of his own knowledge an offence contravening the provisions of the Civil Service Act respecting political partisanship has been committed, the government has acted under the provisions of the Civil Service Act, which provide that a civil servant guilty of political partisanship shall not be retained in the service. I think that list will cover any of the dismissals to which my right hon. friend has referred."

Mr. Meighen - "I presume that that list would cover practically every case, because the statement from any member that a man has been guilty of political partisanship is not very hard to secure from a partisan supporter."

Mr. Mackenzie King - "I did not say a statement from any member. I said a statement from an hon. member of this House that of his own knowledge a civil servant had been guilty of a certain offence which was in the opinion of the government sufficient to warrant his dismissal under the provisions of the Civil Service Act."

